

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

STEAMSHIP INSURANCE MANAGEMENT  
SERVICES LIMITED, a foreign limited liability  
corporation,

Plaintiff,

v.

OSPREY UNDERWRITING AGENCY  
LIMITED, AND ITS CERTAIN  
UNDERWRITERS, a foreign unincorporated  
entity and/or corporation; and AMERICAN  
STEAMSHIP OWNERS MUTUAL  
PROTECTION AND INDEMNITY  
ASSOCIATION, INC., believed to be a New  
York corporation,

Defendants.

Case No.: 15-cv-00043-RSM

**DEFENDANT OSPREY  
UNDERWRITING AGENCY  
LIMITED, AND ITS CERTAIN  
UNDERWRITERS' ANSWER TO  
THIRD AMENDED COMPLAINT  
FOR RELIEF AS A RESULT OF  
DEFENDANTS BEING UNJUSTLY  
ENRICHED AND FOR  
DECLARATORY JUDGMENT**

Defendant OSPREY UNDERWRITERS AGENCY LIMITED, AND ITS CERTAIN  
UNDERWRITERS (hereinafter "Osprey"), by and through counsel, answer Plaintiff's Third  
Amended Complaint for Relief as a Result of Defendants Being Unjustly Enriched and for  
Declaratory Judgment as follows:

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DEFENDANT OSPREY UNDERWRITING AGENCY LIMITED,  
AND ITS CERTAIN UNDERWRITERS' ANSWER TO THIRD  
AMENDED COMPLAINT - 1

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(206) 340-1000

## I. PARTIES

1.1 Osprey admits, upon information and belief, that Plaintiff STEAMSHIP MUTUAL UNDERWRITING ASSOCIATION LIMITED (hereinafter "Plaintiff") is a United Kingdom Limited Liability Company. Osprey is without sufficient information to admit or deny the remaining allegations in Paragraph 1.1 of Plaintiff's Third Amended Complaint and therefore denies the same.

1.2 Osprey admits that it is an English entity located in London, England, where it conducts the business of underwriting ocean marine insurance. Osprey further admits that it issued two sequential insurance policies to Shelford's Boat Ltd. (hereinafter "Shelford"), covering the Fishing Vessel ALEUTIAN LADY for the period February 20, 2011 to February 20, 2013. To the extent Paragraph 1.2 of Plaintiff's Third Amended Complaint alleges anything further, the same is denied.

1.3 Osprey admits, upon information and belief, that Defendant AMERICAN STEAMSHIP OWNERS MUTUAL PROTECTION AND INDEMNITY ASSOCIATION, INC. (hereinafter "The American Club") is a New York Corporation. Osprey is without sufficient information to admit or deny the remaining allegations in Paragraph 1.3 of Plaintiff's Third Amended Complaint and therefore denies the same.

## II. JURISDICTION AND VENUE

2.1 Osprey denies that this Court has personal jurisdiction over it. Osprey is without sufficient information to admit or deny the remaining allegations in Paragraph 2.1 of Plaintiff's Third Amended Complaint and therefore denies the same.

2.2 Osprey denies the allegations in Paragraph 2.2 of Plaintiff's Third Amended Complaint.

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DEFENDANT OSPREY UNDERWRITING AGENCY LIMITED,  
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**III. THE INSURANCE POLICIES**

3.1 Osprey admits Plaintiff seeks, by way of a claim for unjust enrichment, to recover monies from Defendants Osprey and The American Club. To the extent paragraph 3.1 of Plaintiff's Third Amended Complaint alleges anything further, Osprey denies the same.

3.2 Osprey is without sufficient information to admit or deny the allegations in Paragraph 3.2 of Plaintiff's Third Amended Complaint and therefore denies the same.

3.3 Osprey admits that it issued two sequential insurance policies to Shelford, covering the Fishing Vessel ALEUTIAN LADY for the period February 20, 2011 to February 20, 2013. To the extent paragraph 3.3 of Plaintiff's Third Amended Complaint alleges anything further, Osprey denies the same.

3.4 Osprey is without sufficient information to admit or deny the allegations in Paragraph 3.4 of Plaintiff's Third Amended Complaint and therefore denies the same.

**IV. FACTUAL BACKGROUND**

4.1 Osprey admits that Shelford owns and operates the F/V ALEUTIAN LADY. Osprey further admits, upon information and belief, that Mr. Sanchez was employed aboard the F/V ALEUTIAN LADY for a period of time. Osprey further admits, upon information and belief, that Mr. Sanchez alleges to have been injured while working aboard the F/V ALEUTIAN LADY in June 2010. Osprey is without sufficient information to admit or deny the remaining allegations in Paragraph 4.1 of Plaintiff's Third Amended Complaint and therefore denies the same.

4.2 Osprey is without sufficient information to admit or deny the allegations in Paragraph 4.2 of Plaintiff's Third Amended Complaint and therefore denies the same.

4.3 Osprey denies, upon information and belief, that Mr. Sanchez's alleged injury in early 2013, was a "new injury." Osprey is without sufficient information to admit or deny the remaining allegations in Paragraph 4.3 of Plaintiff's Third Amended Complaint and therefore denies the same.

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1           4.4     Osprey denies, upon information and belief, that Mr. Sanchez's personal injury  
 2 complaint alleges "new" injuries apart from those allegedly sustained in June 2010. Osprey  
 3 further denies, upon information and belief, Mr. Sanchez "pled two distinct injury events."  
 4 Osprey is without sufficient information to admit or deny the remaining allegations in  
 5 Paragraph 4.4 of Plaintiff's Third Amended Complaint and therefore denies the same.

6           4.5     Osprey is without sufficient information to admit or deny the allegations in  
 7 Paragraph 4.5 of Plaintiff's Third Amended Complaint and therefore denies the same.

8           4.6     Osprey admits that on or about March 4, 2014, it received notice of the Sanchez  
 9 lawsuit from Polaris Group Ltd., the apparent adjuster retained by Steamship. Osprey denies  
 10 that the "insurance obligations" arising out of the Sanchez Lawsuit were "common, shared  
 11 liabilities" between Osprey, The American Club, and/or Plaintiff. Osprey is without sufficient  
 12 information to admit or deny the remaining allegations in Paragraph 4.6 of Plaintiff's Third  
 13 Amended Complaint and therefore denies the same.

14          4.7     Osprey admits that it properly acknowledged the notice of a potential claim it  
 15 received from Polaris Group Ltd, and that it properly reserved its rights. Osprey further admits  
 16 that it proceeded to investigate the cause and origin of Mr. Sanchez's alleged injuries. Based  
 17 on its investigations and the information provided to it, Osprey concluded there was no  
 18 evidence or allegations that Mr. Sanchez's alleged injuries triggered coverage under the  
 19 policies Osprey issued to Shelford. Osprey properly informed Shelford of its conclusion that  
 20 there was insufficient evidence of a personal injury having occurred during the policy periods,  
 21 of the application of English law to any disputes under the policies, and of the provisions in the  
 22 policies requiring arbitration of any such disputes in the United Kingdom. To the extent  
 23 paragraph 4.7 of Plaintiff's Third Amended Complaint alleges anything further, Osprey denies  
 24 the same.

25          4.8     Osprey admits only that it deferred any decisions regarding continuing  
 26 maintenance and cure to the good judgment of Shelford's defense counsel. Specifically,

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1 Osprey declined assuming direction or conveying authority of Shelford's defense on account  
 2 of the Osprey policies not being implicated by the Sanchez lawsuit. Thus, Osprey denies the  
 3 characterization in Paragraph 4.8 of Plaintiff's Third Amended Complaint that it "refused to  
 4 authorize the treatment." Osprey is without sufficient information to admit or deny the  
 5 remaining allegations in Paragraph 4.8 of Plaintiff's Third Amended Complaint and therefore  
 6 denies the same.

7 4.9 Osprey denies that it has any defense or indemnity obligations arising out of the  
 8 Sanchez lawsuit under the Policies it issued to Shelford or under Washington Law. Osprey is  
 9 without sufficient information to admit or deny the remaining allegations in Paragraph 4.9 of  
 10 Plaintiff's Third Amended Complaint and therefore denies the same.

11 4.10 Osprey admits the allegations in Paragraph 4.10 of Plaintiff's Third Amended  
 12 Complaint. However, Osprey denies that it has any defense or indemnity obligations arising  
 13 out of the Sanchez lawsuit under the Policies it issued to Shelford. Therefore, Osprey had no  
 14 duty to authorize any settlement.

15 4.11 Osprey admits that on September 25, 2014, it received a letter from attorney  
 16 Greg Harper, purporting to act as coverage counsel for Shelford and asserting that all three  
 17 insurers' policies were triggered by the Sanchez Lawsuit. Osprey further admits that some  
 18 portions of Mr. Harper's letter threatened proceedings against the three insurers under  
 19 Washington's Insurance Fair Conduct Act. Osprey seasonably responded to Mr. Harper's  
 20 letter on October 14, 2014, noting, in relevant part, that the Osprey Policies was subject to  
 21 English law and that Washington law did not apply. Osprey further advised Mr. Harper that  
 22 any disputes between Plaintiff and Osprey as to coverage under the Osprey Policies must be  
 23 submitted arbitration in London, England pursuant to the terms of the Osprey Policies.

24 4.12 Osprey is without sufficient information to admit or deny the allegations in  
 25 Paragraph 4.12 of Plaintiff's Third Amended Complaint and therefore denies the same.  
 26

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4.13 Osprey denies that it has any defense or indemnity obligations arising out of the Sanchez lawsuit under the Policies it issued to Shelford. Therefore, Osprey had no duty to authorize or contribute to any settlement. Osprey is without sufficient information to admit or deny the remaining allegations in Paragraph 4.13 of Plaintiff's Third Amended Complaint and therefore denies the same.

4.14 Osprey admits, upon information and belief, that the Sanchez lawsuit was settled in November 2014. Osprey denies that it has any defense or indemnity obligations arising out of the Sanchez lawsuit under the Policies it issued to Shelford. Therefore, Osprey had no duty to authorize or contribute to any settlement. Osprey is without sufficient information to admit or deny the remaining allegations in Paragraph 4.14 of Plaintiff's Third Amended Complaint and therefore denies the same.

4.15 Osprey is without sufficient information to admit or deny the allegations in Paragraph 4.15 of Plaintiff's Third Amended Complaint and therefore denies the same.

## V. CAUSES OF ACTION

**A. FIRST CAUSE OF ACTION–DECLARATORY JUDGMENT (28 U.S.C. § 2201)**

5.1 Osprey reasserts its answers to paragraphs 1.1 through 4.15 as if fully set forth herein.

5.2 Osprey denies the allegations in Paragraph 5.2 of Plaintiff's Third Amended Complaint.

5.3 Osprey denies the allegations in Paragraph 5.3 of Plaintiff's Third Amended Complaint.

## B. SECOND CAUSE OF ACTION—UNJUST ENRICHMENT

5.4 Osprey reasserts its answers to paragraphs 1.1 through 5.3 as if fully set forth herein.

5.5 Osprey denies the allegations in Paragraph 5.5 of Plaintiff's Third Amended Complaint.

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5.6 Osprey denies that it has any defense or indemnity obligations arising out of the Sanchez lawsuit under the Policies it issued to Shelford. Osprey is without sufficient information to admit or deny the remaining allegations in Paragraph 5.6 of Plaintiff's Third Amended Complaint and therefore denies the same.

5.7 Osprey denies the allegations in Paragraph 5.7 of Plaintiff's Third Amended Complaint.

5.8 Osprey denies the allegations in Paragraph 5.8 of Plaintiff's Third Amended Complaint.

5.9 Osprey denies the allegations in Paragraph 5.9 of Plaintiff's Third Amended Complaint.

## VI. PRAYER FOR RELIEF

6.1 Osprey denies that Plaintiff is entitled to its Prayer for Relief as averred in Paragraphs 6.1 through 6.5 of Plaintiff's Third Amended Complaint.

## VII. AFFIRMATIVE DEFENSES

Having Answered Plaintiff's Third Amended Complaint, Osprey asserts the following affirmative defenses. By asserting the following affirmative defenses, Osprey does not concede or admit that it bears or has any burden of proof in connection therewith.

7.1 This Court lacks personal jurisdiction over Osprey and therefore Plaintiff's claims against Osprey should be dismissed pursuant to *Federal Rule of Civil Procedure* 12(b)(2).

7.2 Pursuant to the terms of the policies issued to Shelford, no action against Osprey may be maintained except as allowed under the express terms of the policies. Thus, Plaintiff's claims against Osprey should be dismissed under the doctrine of *Forum Non Conveniens* and/or under the U.S. Supreme Court's ruling in *Brillhart v. Excess Insurance Company of America*, 316 U.S. 491 (1942).

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1           7.3     Plaintiff has failed to state a claim upon which relief can be granted for unjust  
2 enrichment and therefore its claims against Osprey should be dismissed pursuant to *Federal*  
3 *Rule of Civil Procedure* 12(b)(6).

4           7.4     Plaintiff's claims are barred, in whole or in part, because it cannot establish the  
5 existence of coverage for the Sanchez lawsuit under the terms of the Osprey Policies issued to  
6 Shelford.

7           7.5     Plaintiff's claims are barred, in whole or in part, because it cannot establish a  
8 duty to defend or to fund or reimburse defense costs for the Sanchez lawsuit under the terms of  
9 the Osprey Policies issued to Shelford.

10          7.6     Plaintiff's claims are barred, in whole or in part, because it acted as a volunteer  
11 in defending and paying all expenses, including but not limited to defense costs, expenses, and  
12 indemnity or settlement payments related to the purported "new" injury.

13          7.7     Plaintiff's claims against Osprey are barred, in whole or in part, because there  
14 was a failure to comply with the provisions of the Osprey Policies, including but not limited to  
15 the Claims Notification Clause, the Osprey Law and Practice Clause, and/or the Osprey  
16 Service of Suit Clause.

17          7.8     Plaintiff's claims against Osprey are barred, in whole or in part, because there  
18 was a failure to obtain Osprey's written consent prior to the assignment of any claims or  
19 interests under the Osprey Policies issued to Shelford.

20          7.9     Plaintiff's claims are barred, in whole or in part, by the equitable doctrines of  
21 laches, waiver, estoppel, and/or unclean hands.

22          7.10    Plaintiff's claims are barred, in whole or in part, by any applicable statute of  
23 limitations.

24          7.11    Osprey reserves the right to assert any and all additional affirmative defenses as  
25 allowed under the *Federal Rules of Civil Procedure* and applicable law.  
26

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**OSPREY'S PRAYER FOR RELIEF**

Osprey prays for relief as follows:

1. That the Court dismiss Plaintiff's Third Amended Complaint with prejudice;
2. That the Court award Osprey reasonable attorney fees and costs as allowed by law;
3. That the Court grant such other relief as it deems just and equitable.

DATED this 2<sup>nd</sup> day of December, 2015.

COZEN O'CONNOR

By: /s/ Richard F. Allen

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Attorneys for Defendant Osprey  
Underwriting Agency Limited, and Its  
Certain Underwriters

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 2, 2015, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Christopher W Nicoll (cnicoll@nicollblack.com, htowner@nicollblack.com, jhendricks@nicollblack.com, lmartin@nicollblack.com, mtrubac@nicollblack.com)

John Edward Duke Powell (jpowell@cairncross.com, gvolynsky@cairncross.com, jbrown@cairncross.com, jschiewe@cairncross.com)

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DATED this December 2, 2015.

COZEN O'CONNOR

By: /s/ Bonnie L. Buckner  
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